IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7249 of 1996
with
SPECIAL CIVIL APPLICATION No 8204 of 1997
with
SPECIAL CIVIL APPLICATION No 577 of 1998
with
SPECIAL CIVIL APPLICATION No 6189 of 1998
with
SPECIAL CIVIL APPLICATION No 8163 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEBHABHAI J DASA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7249 of 1996
MR BP MUNSHI for Petitioner No. 1-2
MR PRADIP BHATE A.G.P. for Respondent No. 1-4
M/S PATEL ADVOCATES for Respondent No. 1-4

2. Special Civil Application No. 8204 of 1997
MR BP MUNSHI for Petitioner No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 11/08/2004

ORAL COMMON JUDGEMENT

1.0. In this group of petitions the petitioners have prayed that the respondents be directed to appoint them as Jail Police Constables as per the Select list prepared in April, 1993, whereby their select list was cancelled in view of the decision of the State Government to curtail the expenditure.

2.0. The short facts of the case as they emerge from the record of the petition are that the respondents have issued a advertisement to recruit Jail Police Constables in the State of Gujarat as 100 posts were to be filled in, out of which 35 posts were to be filled in from Saurashtra region.

2.1. The case of the petitioners is that since they were eligible, they applied for the same. The petitioners submitted that they have registered their names with the Employment Exchange office at Junagadh and had also received letters dated 3rd January, 1992 and 11th December, 1992 informing that their names are being recommended to the Superintendent of District Jail, Junagadh for being recruited as Jail Police Constables or Sepoy.

2.2. It is further the say of the petitioners that after due process, their names were included in the select list. The petitioners further state that since they did not receive any appointment orders from the concerned department, they made representation to various authorities for issuance of the appointment orders. The petitioner further states that after making various representations, the respondents vide letter dated 20th July, 1997 informed that the select list is cancelled due to economy measures introduced by the State Government. Since they are deprived of their legitimate right, they have filed the above petitions.

3.0. I have heard the learned advocates for the respective parties. The learned advocates have relied upon several decisions of this Court as well as the Apex Court, to which, I will deal with in the due course of the judgment. On going through the record of this petition, it appears that while admitting the petition,

this Court [Coram : M.R. Calla, J.] vide order dated 19th February, 1997, passed the following order :-

"RULE. In the meantime, it is ordered that the select list of Jail Police Constables which is prepared in the year 1993 shall not be cancelled. The respondents shall be at liberty to apply for vacation/modification of this order after filing the detailed parawise reply to this petition."

3.1. In view of that the respondents filed their reply, wherein in para 5 they have stated as under :-

"5. I further say that in the year 1993, this office anticipated the sanction from the norms committee for filling about 135 posts. In the said year, about 135 posts of Sepoys were vacant due to promotion of employees to higher posts. Taking into consideration the administrative exigencies, discipline in the jail, etc., these 135 posts which were vacant, were filled in by appointing candidates from the waiting list of the year 1993, in the interest of public security. I further say that this office had in anticipation of the sanction of 135 posts by the norms committee, a select list of 49 candidates was prepared. I say that the said select list consists of the following different areas of Gujarat.

Sr. No.	Name of Place	No. of Candidates
1.	Ahmedabad	7
2.	Rajkot	26
3.	Baroda	16

I say that the name of the petitioner no. (1) is at Sr. No. 9 in the select list of Rajkot area. However, all these posts were not sanctioned by the State Government and the said decision was communicated to our office by letter dated 22nd June, 1995 (Xerox copy of the said letter is annexed hereto and marked as Annexure-I).

4.0. However, Mr. Munshi learned advocate appearing for the petitioners has submitted that the petitioners have the legitimate right for appointment, in view of the fact that they were selected by the selection committee after due process. In view of that Mr. Munshi has placed reliance on the decision of this Court in the case of Rathodbhai J. Dungarbhai & Ors., v. State of Gujarat & Ors. reported in 1995 (1) G.L.H. p.180, wherein this Court has held as under :-

"51. Special Civil Application No. 1367/91 is filed by ten petitioners from Valsad Dist. It is their case that an advertisement was issued in the year 1984 to fill in the vacancies of Gram Sevaks in Valsad Dist. Panchayat. They have competed for such post and that their names were included in the select list. From the chart produced by the State Govt., it becomes clear that 35 vacancies of Gram Sevaks (Multipurpose) were notified. Select list of 66 candidates was prepared and out of such select list only 3 candidates were appointed and rest of the posts were lying vacant. It is, thus, clear that the select list which was prepared fro 35 candidates of Gram Sevaks (Multipurpose) only 3 persons were appointed and 32 vacancies then existing are not filled up. Consistent with the principles laid down by the Supreme Court in the case of State of Bihar v. Madan Mohansingh reported in A.I.R. 1994 S.C. p.765 (supra), I am of the opinion that the select list which was meant for the vacancies then existing shall have to be operated for such vacancies. As against 35 vacancies only 3 were filled in, and, therefore, 32 candidates from the select list are required to be appointed as per their placement in the select list. It is now known to this Court as to at which serial numbers the petitioners were laced in the select list. The respondent-Valsad Dist. Panchayat is directed to appoint 32 candidates from the said select list of Gram Sevaks (Multipurpose) so as to exhaust all the 35 vacancies. Such appointment shall be given to candidates as per their placement in the

merit list only and principle of pick and choose shall not be applied. Appointment shall be offered strictly as per merit from the select list till 32 persons are appointed. It goes without saying that if names of the petitioners appear as per their merit in such select list they shall also be offered appointment to the post of Gram Sevak (Multipurpose). However, if all or anyone of the petitioners is/are beyond 32 persons as per merit, such petitioners shall not be entitled to any relief. This petition accordingly succeeds to the aforesaid extent and rule is made absolute accordingly with no order as to costs."

4.1. Mr. Munshi has further relied on the decision of this Court in the case of Chaudhari Govabhai Nathubhai & Ors., v. Banaskantha Jilla Panchayat Seva Pasand Samiti & Anr., reported in 1988 (1) G.L.H. (U.J.) 14 p.21, wherein, this Court has held that if there are vacancies available, appointments should be made from amongst the candidates who are in the waiting list according to their rank in the select list. It would not be correct to deny appointments, if there are vacancies, merely on the ground that the process of preparing fresh list is started by giving an advertisement.

4.2. Mr. Munshi has further placed reliance on the decision of the Punjab & Haryana High Court in the case of Harjit Kaur & Ors., v. State of Haryana & Ors., reported in 1998 (1) S.L.R. p.198. wherein it is observed as under :-

"4. The petitioners have alleged that although they fulfill the conditions of eligibility and vacant posts continued to remain available with the respondents in different districts, they have not been appointed and the respondents have with an ulterior motive left the posts unfilled. In all the petitions, the petitioners have claimed that their names appear in the merit list prepared by the Board and they have a legal as well as constitutional right to be appointed against the posts which remained unfilled due to the failure of the respondents to offer appointment to the candidates of their category or which remained

unfilled due to non-joining of the selected candidates who were offered appointment."

4.3. Mr. Munshi has further relied on the decision of the Apex Court in the case of Asha Kaul v. State of Jammu & Kashmir reported in (1993) 2 S.C.C. p.573, wherein, it is held as under :-

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash Chander Marwaha; Mani Subrat Jain v. State of Haryana; State of Kerala v. A. Lakshmikutty), but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government - the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates whey they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India, where the earlier decisions of this Court are also noted. The following observations of the Court are apposite (SCC p. 50-51, para 7):

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be

> legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State if bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana or Jatendra Kumar v. State of Punjab."

4.4. Mr. Munshi has also placed reliance on the decision of the Apex Court in the case of Govt. of Tamil Nadu v. G. Mohd. Ameenuddin reported in A.I.R. 1999 S.C. p.2202. The said decision will not apply in the present case, because the petitioners have not worked with the State Government.

4.5. Mr. Munshi has also placed reliance on the decision of the Apex Court in the case of Union of India & Ors. v. Ishwar Singh Khatri & Ors., reported in 1992 Supp (3) S.C.C. p.84, wherein the Apex Court has held as under :-

> "7. Therefore, in the premises, we have to conclude that the Selection Board prepared the panels containing 1492 candidates as against the then available vacancies. In view of this conclusion, it goes without saying that the selected

> candidates have a right to get appointment. We, therefore, see no reason to disturb the judgment of the Tribunal."

4.6. As against that Mr. Bhate learned A.G.P. appearing for the respondents has placed reliance on the decision of the Apex Court in the case of State of Bihar v. The Secretariat Assistant Successful Examinees Union 1986 & Ors., reported in A.I.R. 1994 S.C. p.736, wherein the Apex Court has observed as under :-

> "10. It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary."

5.0. Further looking to the facts narrated hereinabove, and in view of the affidavit-in-reply, it appears that the ground on which the respondents have cancelled the select list in view of the Circular dated 14th January, 1991 issued by the State Government. It is also clear that as per the policy of the State Government itself, the select list of 1993 either stands cancelled or lapsed in the year 1994, but the State Government by acting arbitrarily operated the list of 1993 in the year 1995. Thus, in view of the arbitrary action on the part of the the respondents, the petitioners were deprived of their legitimate right for appointment, though there were vacant posts available.

5.1. However, in view of the law laid down by this Court and the Apex Court, it is clear that if there are vacant posts available, it would not be correct to deny appointments. In the present case, though there were vacant posts available, the respondents by acting arbitrarily, operated the select list of 1993, in the year 1995 and have deprived the legitimate right of the petitioners for appointment.

5.2. Therefore, in the premises aforesaid, keeping in mind the law laid down by the Apex Court as well as this Court, I issue the following directions :-

The respondents shall consider the case of the petitioners for the post of Jail Police Constable against the vacant posts which are available today, if they are otherwise eligible. It is however, clarified that if they are eligible, the respondents shall not consider the age limit at the time of appointment. The respondents shall complete the said exercise as early as possible, but in any case not later than three months from the receipt of writ/order of this Court.

6.0. With the above observations and directions, the petitions are partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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